REMARKS

In response to the Office Action mailed November 14, 2008, Applicants respectfully request reconsideration of the Application in view of the foregoing Amendments and the following Remarks. The claims as now presented are believed to be in allowable condition.

Claims 4, 6, 10-11, 15, 17, and 21-22 have been canceled. Claims 1 and 12 have been amended. Claims 1-3, 5, 7-9, 12-14, 16, and 18-20 remain in this application, of which claims 1 and 12 are independent claims.

Rejection of Claims 1, 3, 5, 8-9, 12, 14, 16, and 19-20 under 35 U.S.C. §103(a)

Claims 1, 3, 5, 8-9, 12, 14, 16, and 19-20 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Publication No. US 2001/0038704 to Ito et al. (hereafter referred to as "Ito") in view of U.S. Patent No. 6,625,755 to Hirata et al. (hereafter referred to as "Hirata"). Applicants respectfully traverse this rejection.

In giving an obviousness rejection, the Examiner bears the initial burden of factually supporting a prima facie conclusion of obviousness. (See, MPEP, §2142). To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be ***some suggestion or motivation***, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, ***the prior art references*** must teach or suggest ***all the claim limitations***. (See, MPEP, §2142.) (Emphasis added.)

The rejection of claims 1 and 12 under 35 U.S.C. §103(a) as being unpatentable over Ito in view of Hirata is not appropriate because *inter alia* claims 1 and 12 have been amended and these prior art references fail to teach or suggest all the claim limitations of amended claims 1

and 12 and because there is no motivation or suggestion in these references to combine or modify these references to the present invention.

Amended claims 1 and 12 recite that a retry of reading or writing of the data with one of the required time period (in step A) or the predetermined maximum number of retries (in step D) is performed after the step of determining the type of data and in both cases of the data being and not being of the predetermined type of data.

For example, referring to FIG. 2 of the Present Application, the steps 40 and 42 state the step of retrying the reading or writing of data in both cases of the data being video/audio data and not being video/audio data after being determined in step 38.

In contrast in FIG. 5 of Hirata, the step 117 of determining the type of data is performed after the retrying is terminated with n>N, and a retrying operation is not performed when the data is not the management data as stated at col. 6, lines 34-41 of Hirata:

> In step 117, when it is ascertained that the data is not the management data area, ***the retrying process is not performed*** and, for example, dummy read data is transmitted to the host computer 10.... (Emphasis added.)

Similarly by contrast in FIG. 6 of Hirata, the step 218 of determining the type of data is performed after the retrying is terminated with t>T, and a retrying operation is not performed when the data is not the management data as stated at col. 7, lines 38-43 of Hirata:

> In step 218, when it is ascertained that the data is not the management data area, ***the retrying operation is not performed*** and, for example, dummy read data is transmitted to the host computer 10.... (Emphasis added.)

Thus, FIGS. 5 and 6 of Hirata clearly teach that a retry operation is not performed after the step of determining that the data is not of the management data type. Accordingly, Hirata teaches away from a retry of reading or writing of the data being performed with one of the required time

period or the predetermined maximum number of retries after the step of determining the type of data and in both cases of the data being and not being of the predetermined type of data, as recited in amended claims 1 and 12.

Also, Ito clearly teaches omitting any retry process when the data is determined to be of the audio/video type as stated at paragraphs [0015] and [0017] of Ito:

> [0015] ....Therefore, in the case of data whose reading-out continuity is more important than reliability, ***the retry processing is omitted***, and the reading-out processing time can be shortened.
>
> ....
>
> [0017] ....Therefore, in the case of data whose recording continuity is more important than reliability, ***the verifying processing is omitted***, and the writing processing time can be shortened. (Emphasis added.)

Thus, Ito also teaches away from a retry of reading or writing of the data being performed with one of the required time period or the predetermined maximum number of retries after the step of determining the type of data and in both cases of the data being and not being of the predetermined type of data, as recited in amended claims 1 and 12.

In summary, Hirata and/or Ito, either individually or in combination, fail to teach or suggest a retry of reading or writing of the data being performed with one of the required time period or the predetermined maximum number of retries after the step of determining the type of data and in both cases of the data being and not being of the predetermined type of data, as recited in amended claims 1 and 12.

If the Examiner disagrees, the Examiner is respectfully requested to point out ***exactly where***, including ***specific column(s), line number(s), and/or figure element(s)*** in Hirata and/or Ito that teaches all of such limitations of amended claims 1 and 12.

Accordingly, a prima facie conclusion of obviousness of claims 1 and 12 cannot be established because Hirata and/or Ito fail to teach or suggest all the limitations of amended claims 1 and 12, and the rejection of claims 1 and 12 under 35 U.S.C. §103(a) should be withdrawn.

Claims 3, 5, and 8-9, which depend from and further limit claim 1, are allowable for at least the same reasons that claim 1 is allowable as stated above.

Claims 14, 16, and 19-20, which depend from and further limit claim 12, are allowable for at least the same reasons that claim 12 is allowable as stated above.

Rejection of Claims 2, 7, 13, and 18 under 35 U.S.C. §103(a)

Claims 2 and 7, which depend from and further limit claim 1, are allowable for at least the same reasons that claim 1 is allowable as stated above.

Claims 13 and 18, which depend from and further limit claim 12, are allowable for at least the same reasons that claim 12 is allowable as stated above.

Conclusions

In view of the foregoing amendments and remarks, this application should now be in condition for allowance. A notice to this effect is respectfully requested. Please feel free to contact the undersigned should any questions arise with respect to this case that may be addressed by telephone.

Respectfully submitted,
for the Applicant(s)

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CERTIFICATE OF MAILING

The undersigned hereby certifies that the foregoing AMENDMENT AND RESPONSE is being deposited in the United States Postal Service, as first class mail, postage prepaid, in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 13th day of February, 2009.

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